

LEGAL NEWSLETTER

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- **Mgaloblishvili, Kipiani,
Dzidziguri (MKD) Law Firm**

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Laws & Secondary Legislation

Amendments to Georgian Civil Code

Amendments to the Civil Code dated 26 November 2004, provide that authority to forbid or suspend activities of foundations and unions (non-commercial legal entities under Georgian law) shall be vested with local courts effective from 2 March 2005. Possible grounds for forbidding or suspending such activities could be either starting entrepreneurial activities by foundations and/or unions or impossibility to accomplish goals by such non-commercial entities.

Amendments to Georgian Constitution

Further series of amendment into **the Constitution of Georgia** provides decrease of MP number from 235 down to 150, whereas 100 MP to be elected based on a party-list system, and 50 MP-as individuals. Respective amendments were introduced by **the Constitutional Law of Georgia No1010-IS**, dated 23 February 2005.

Order No 705 of the Minister of Finance On Taxpayers' Personal Tax Accounting Cards

The mentioned order, dated 29 October 2004, was enacted under Georgian Tax Code, and the respective Instruction provides for settlement of budgetary tax obligations by taxpayers through respective recordings on their personal tax accounting cards. The later shall reflect both amounts declared and paid by taxpayers to the state budget as well as amounts accrued by tax and other authorities, penalties, payments in excess, sanctions, etc., and is regarded to be a primary data document of tax authorities. Taxpayers' personal tax accounting cards shall be kept both on every resident and/or non-resident, which is recognized and treated as a taxpayer under Georgian tax legislation. The said cards are to be opened at the beginning of each calendar year and respective amounts shall be recorded in local currency (Lari and Tetri).

Laws & Secondary Legislation

Resolution No2 of the Georgian National Commission on Communications

The above mentioned resolution, dated 24 December 2004, was enacted regulating certifying radio and satellite communication terminal installments with Annexes on Basic Requirements for Electromagnetic Abuse. The said Resolution is effective pursuant to article 20(5), article 44 and article 49 of the Law of Georgia on Communication and Post and article 2 of the Regulation on the Georgian National Commission on Communications as approved by the Presidential Decree No326, dated 29 June 2003.

Order No1-1/112 of the Minister of Economic Development of Georgia on Certification Rules for User of Aircraft

Certification rules for aircrafts are provided by a newly introduced order of the Minister of Economic Development of Georgia dated 10 February 2005 pursuant to the Chicago Convention, Georgian Air Code and Georgian laws on Normative

Acts, State Management and Regulation of in Transport and Communication Fields, aimed at increasing safety of flights per internationally recognized standards

Order No5 of the Head of Georgian State Supervisory Commission on Insurance

New forms of licenses for insurance activities and insurance brokerage activities in Georgia were approved by Order No5 of the Head of Georgian State Supervisory Commission on Insurance dated 22 February 2005. The Order was enacted under the Law of Georgia on Licensing and Permitting of Entrepreneurial Activities, dated 14 May 2002.

International Treaties

The international treaty between the Government of Georgia and the Government of Great Britain and Northern Ireland on Avoidance of Double Taxation on Income and Capital and Prevention from Evasion with respect of Tax Payments has been ratified by the Parliament of Georgia by passing Resolution No818-rs, dated 24 December 2004.

Latvia was ratified by Georgian Parliament on 22 February 2005 per resolution No1000-IS.

The Protocol to the Energy Charter on Energy Effectiveness and Respective Environmental Aspects has been ratified by the Georgian Parliament by the **Resolution No656-II** dated 9 December 2004

Georgian Parliament has ratified the Treaty on **EUJUST THEMIS** per parliamentary resolution No1019-IS, dated 23 February 2005.

The Treaty on Preventing Double Taxation on Income and Capital and Preventing Evasion from Taxes between Georgian the Republic of

Court Practice

Court Precedent

JSC Zestaponi ferrous-alloy factory brought a claim before the Kutaisi Regional Court against the defendant, Ronly Holding Limited on April 29, 2003 and requested the nullification of the contract signed by the parties.

The plaintiff backed up his claim with the fact that the disputed agreement envisaged the solution of disputes between the parties in London Arbitrage Court, according to the law of England.

From the plaintiff's point of view, since the owner of the control package of shares of one of the parties to the contract – JSC Zestaponi ferrous-alloy Factory – is the government, for the contract the visa had to be issued by the Ministry of Justice according to the article 4.g of the by-laws of the Ministry of Justice, as established by order N544 of the President of Georgia, dated December 31, 2001.

In the circumstances of non-existence of visa of the Ministry of Justice, according to the plaintiff, the contract constituted an agreement signed in violation of law and without approval, and therefore, was void, according to the articles 54 and 59 of the Georgian Civil Code.

According to the December 2, 2003 decision of the Bar for Civil and Entrepreneur cases of Kutaisi Regional Court the claim was satisfied and the disputed contract was considered as void

The Regional Court had the following rationale for the decision:

The court considered that according to the article 4.g of the by-laws of the Ministry of Justice, as established by order N544 of the President of Georgia, dated December 31, 2001, the disputed contract had to have a visa from the Ministry of Justice. However, due to non-existence of the visa, the treaty was void according to the articles 54 and 59 of the Georgian Civil Code.

According to the articles 12 and 18 of the Law of Georgia on Normative Acts, the court considered that the President was authorized to regulate the questions, related to the issuance of visa for contracts, subjects to the jurisdiction of the Arbitrage, signed by the companies, controlled by the government.

The Court did not take into consideration the counterclaim of the respondent, that it was inadmissible to restrict the representative authority of director by President's Order and pointed out that the restriction deals not with the Director's authority, but with the authority of the company, namely, the Government has restricted the authority of certain companies with respect to one specific direction.

Court Practice

According to April 6, 2004 decision of the Supreme Court of Georgia, the mentioned holding of the Kutaisi Regional Court was reversed and JSC Zestaponi ferrous-alloy factory was refused in satisfaction of its claim.

According to the article 2 of the Convention on Acknowledgement and Execution of the decisions of Foreign Arbitrages and according to article 35.1 of the Law of Georgia on Private International Law, the Cassation court considered that the parties were entitled to subject the disputes between them to the foreign arbitrage and also to chose the legislation, governing the contract.

In these circumstances, according to the Cassation Court, with respect to the article 186 e of the Georgian Code for Civil Procedure, the Regional Court should not have had admitted the lawsuit.

The Cassation Court held that since the parties chose their relations to be regulated by English law, according to the article 35 of the Georgian Law on Private International Law the question of nullification of the contract should have been resolved according to Georgian and English legislation. The plaintiff, however, failed to present evidence showing that the contract was void under English legislation.

The Cassation Court held that the disputed contract was not void under Georgian legislation either.

The Cassation Court did not take into consideration the submission of the representative of JSC Zestaponi ferrous-alloy factory about the restriction of the capacity and mentioned that "While discussing the capacity of a legal person, it is important whether which organ conducts activities on behalf of the legal person, who represents the latter in relation with third parties and not the question whether who takes legally important decision within the legal person itself". According to the article 9.4 of the Law of Georgia on Entrepreneurs the court pointed that the representative authority of the director with respect to third parties can not be restricted. The court stated that "if the director signs an agreement that he/she is not entitled to sign according to article 9.7 of the Law of Georgia on Entrepreneurs, he/she will be held responsible before the company and the question of the nullification of an agreement will not rise".

Mgaloblishvili, Kipiani, Dzidziguri (MKD) law firm was founded in November 1996. It operates as a general partnership and is recognized as well-established, respected leading law firm in Georgia with national, regional and international clients.



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Disclaimer: This Legal update is written as a general guide only. It is not intended to contain definitive legal advice which should be sought as appropriate in relation to a particular matter. If you would like further information on the issues reported here, please contact Mr. Mikheil Gogeshvili at: mgogeshvili@mkd-law.com

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